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November 17, 2004

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338;

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this ex parte to set the record straight concerning competitive deployment of DS-1 and DS-3 loop facilities.<sup>1</sup>

Notwithstanding MCI's claims to the contrary, there is evidence in the record that competing local exchange carriers ("CLECs") have self-deployed DS-1 and DS-3 loop facilities.<sup>2</sup> For example, Bay Ring admits to having self-provisioned DS-1/DS-3 loops in its network located in New Hampshire, Maine, and Massachusetts.<sup>3</sup> Likewise, both X/O and Xspedius acknowledge that they self-provide DS-1 and DS-3 channels connecting to their backbone network using their own fiber optic facilities.<sup>4</sup> Indeed, X/O's network is

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<sup>1</sup> See, e.g., Ex Parte Letter from Michael H. Pryor, Counsel to NuVox, Inc., to Marlene H. Dortch, Secretary, FCC (October 26, 2004) ("*NuVox Ex Parte*"); Ex Parte Letter from Ruth Milkman, Counsel to MCI, to Marlene H. Dortch, Secretary, FCC (November 5, 2004) ("*MCI Ex Parte*").

<sup>2</sup> *MCI Ex Parte* at 3 (claiming that there is "[n]o evidence of any CLEC that is self-deploying DS-1 or DS-3 loop or transport circuits").

<sup>3</sup> Declaration of Steven A. Wengert ¶ 10.

<sup>4</sup> Declaration of Wil Tirado ¶ 6; Declaration of James C. Falvey ¶ 10.

connected to more than 2,300 "on-network buildings," at least some of which are served by DS1 channels connected to X/O's backbone network.<sup>5</sup>

Not only are CLECs self-providing DS-1 and higher loops, they also are able to obtain such facilities from other competing providers.<sup>6</sup> Sprint's alternative vendor database contains the locations of more than 30,000 buildings in which alternative loop facilities are available.<sup>7</sup> Additional buildings where alternative facilities are available likely have been identified by AT&T and MCI, which have more extensive networks, but neither AT&T nor MCI will divulge where they self-provision DS-1 facilities or where they are able to acquire such facilities from competitive access providers or network-based CLECs.

That CLECs have self-deployed DS-1 loop facilities was confirmed by a recent study of competition in North Carolina prepared at the request of the North Carolina Utilities Commission. This survey, a copy of which is enclosed as Appendix 1, was conducted by RTI International, found that: (1) CLECs serve 60% of the non-switched digital private line - DS-1 or greater connections in North Carolina, the vast majority of which (87.3%) are served through the CLECs' own facilities; and (2) CLECs have a 58% share of the switched DS-1 market in North Carolina, a substantial portion of which (31.2%) is served through the CLECs' own facilities.<sup>8</sup>

Such evidence belies NuVox's claim that business customers "cannot economically be served over self-deployed DS-1 loops."<sup>9</sup> NuVox's claim also is belied by public pronouncements to investors and consumers by facilities-based carriers competing in BellSouth's region that they self-provide DS-1 or DS-3 level service using their own facilities. A summary of some of these pronouncements is enclosed as Appendix 2. NuVox also makes no attempt to reconcile its claims with the fact that Cox

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<sup>5</sup> Declaration of Chris McKee ¶ 6 (filed in support of X/O's Emergency Petition for Expedited Determination That Competitive Local Exchange Carriers Are Impaired Without DS1 UNE Loops).

<sup>6</sup> Declaration of Dan J. Wigger ¶ 24 (noting that Advanced Telecom purchases 10% of its DS-1 loops in Washington from another carrier); Declaration of Wil Tirado ¶ 11 (noting that CLECs offer DS-1/DS-3 loops on a wholesale basis in approximately 5% of the buildings served by X/O).

<sup>7</sup> Comments of Sprint Corp. at 45.

<sup>8</sup> RTI International's findings concerning CLEC non-switched services are tentative because of certain data reliability issues, due in part to the failure of two CLECs to report their non-switched connections by rate center and concern that special access services and perhaps other non-switched services connections may not have been consistently reported by the CLECs. Nevertheless, regardless of the CLECs' actual share of the non-switched DS-1 market in North Carolina, it is clear that the carriers are economically deploying DS-1 facilities to compete in the State.

<sup>9</sup> *NuVox Ex Parte* at 6.

and Time Warner Cable provide service over their own self-deployed loops to approximately 260,000 business customers.<sup>10</sup>

Experience in the marketplace provides further confirmation that CLECs are competing successfully in BellSouth's region using their own self-provisioned DS-1 and higher facilities. For example, independent market research conducted at BellSouth's request determined that facilities-based CLECs have a sizeable share of the DS-1 market in BellSouth's region, with a particularly strong market presence in such metropolitan areas as Orlando, Nashville, and Atlanta. That research also demonstrates that CLECs have a particularly strong share of fiber-lit buildings, which establishes that CLECs can and do successfully building out loops to connect their fiber rings to customers.<sup>11</sup>

The competitive successes enjoyed by facilities-based CLECs in the DS-1 market is clear from Appendix 3, which is a sampling of actual competitive losses sustained by BellSouth at the hands of facilities-based carriers. Although BellSouth does not have a comprehensive competitive disconnect tracking system and makes no attempt to isolate competitive losses based on the CLECs' business plan, BellSouth conducted an internal analysis to identify customers to whom BellSouth had provided DS-1 services that it lost in recent months when the customer opted to take its business to a competitor. From this group, BellSouth eliminated any customers that were being served via special access or UNE facilities leased from BellSouth. As a result of this process, BellSouth has been able to identify specific examples of DS-1 business that it has lost to facilities-based competitors.

BellSouth has no way of knowing what services these customers are actually buying from their current service provider. Nor do these examples represent all of the DS-1 business BellSouth has lost to facilities-based competitors. For example, BellSouth has not made an attempt to identify DS-0 business customers that BellSouth has lost to facilities-based competitors that have successfully up-sold their own DS-1 services.<sup>12</sup> Nevertheless, this information provides anecdotal evidence that true facilities-based competition exists for DS-1 services, notwithstanding CLEC claims to the contrary.

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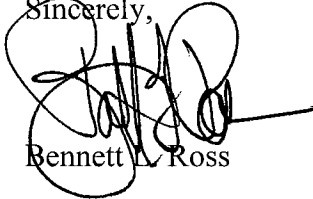
<sup>10</sup> Ex Parte Letter from Jonathan Banks, BellSouth, to Marlene H. Dortch, Secretary, FCC (November 8, 2004).

<sup>11</sup> Declaration of Nancy Starcher ¶¶ 32-34 (proprietary).

<sup>12</sup> See, e.g., Declaration of Chris McKee ¶ 6 (filed in support of X/O's Emergency Petition for Expedited Determination That Competitive Local Exchange Carriers Are Impaired Without DS1 UNE Loops) (noting that X/O will provide service via DS-1 access "[w]henver the customer requires at least 6 lines/trunks with a minimum of 14 channels ...").

Ms. Marlene H. Dortch  
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Please include this letter and the enclosed Appendices in the record in this proceeding.

Sincerely,  
  
Bennett L. Ross

BLR:kjw  
Enclosures

cc: Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Daniel Gonzalez  
Scott Bergmann  
Jeffrey Carlisle  
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Thomas Navin  
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